

PO3 GASPAR TALAUE, PO2 GILBERT PERALTA, PO2 GLENN OBRERO, PETITIONERS, VS. FORTUNATO BICAS, JR., RESPONDENT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Petitioners fulminate against the Order dated 26 April 2012 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) which affirmed its earlier Decision[2] dated 17 June 2011 suspending them from service, in OMP-P-A-09-0317-D. The fallo thereof reads:

“WHEREFORE, there being substantial evidence, PO3 Gaspar Talaue, PO2 Glenn Obrero and PO2 Gilbert Peralta are hereby found GUILTY of SIMPLE MISCONDUCT and are meted the penalty of SUSPENSION FROM THE SERVICE FOR SIX (6) MONTHS WITHOUT PAY. If the penalty of suspension cannot be served by reason of resignation or retirement, the penalty of FINE equivalent to the respondents' individual salaries for Six (6) Months shall be imposed.

Let the Secretary of the Department of Interior and Local Government (DILG) and the Director General, Philippine National Police, be furnished a copy of this Decision for its proper implementation.

SO ORDERED.”[3]

At the onset, We discern that petitioners mistakenly filed the instant Petition for Review[4] under Rule 42 of the 1997 Rules of Civil Procedure.[5] Appropriately, the Petition should have been filed under Rule 43. Still and all, in the interest of substantial justice, We take cognizance of the Petition.

The record evinces the following prevenient facts:

On 19 March 2009, respondent Fortunato Bicas, Jr. (respondent) filed an Affidavit-Complaint[6] before the OMB-MOLEO accusing herein petitioners PO3 Gaspar Talaue (Talaue), PO2 Gilbert Peralta (Peralta) and PO2 Glenn Obrero (Obrero) of Gross Misconduct and Serious Physical Injuries. Collectively, We shall refer to the latter as petitioners.

Respondent averred that at around 12:30 o'clock in the afternoon of 22 February 2009, he was at the Accibal Compound in Batasan Hills, Quezon City to engage in cockfighting. Sometime later, petitioners arrived carrying M-16 rifles. They were clad in white T-shirt and short pants.

Upon arriving thereat, petitioners started firing their M-16 rifles up in the air. Since respondent was near the gate of the compound, he saw petitioners demanding at gun point from Kagawad Edgar “Macky” Macario the amount of P7,000.00 collected as entrance fee. In a trice, petitioners focused their attention on respondent. PO2 Peralta then hit the latter's left foot with the rifle, causing him to fall on the ground. Thereafter, PO3 Talaue and PO2 Obrero took turns kicking his left foot.

Subsequently, the Barangay Public Safety Officer (BPSO), Roger Ferrer (Ferrer), assisted respondent and brought him to the Philippine Orthopedic Center.[7] Ferrer executed a Sinumpaang Salaysay[8] corroborating respondent's avowals.

On 17 June 2011, OMB-MOLEO rendered the Decision finding them guilty of Simple Misconduct.

Inveighing against the Decision, petitioners filed a Motion to: Recall/Reconsider Decision; Recall Suspension and Immediately Reinstate^[9] maintaining that they never received any of the Orders dated 17 December 2010 and 15 June 2010, requiring them to file a Verified Position Paper and Counter-Affidavits, respectively. As such, the said Decision was null and void and should therefore be set aside. Furthermore, petitioners asseverated that they should be reinstated to their respective assignments.

As it happened, petitioners were directed to file their Counter-Affidavits and Position Papers.^[10]

In the challenged Order,^[11] the OMB-MOLEO denied petitioners' Motion and affirmed the 17 June 2011 Decision, ratiocinating in this wise:

“On April 18, 2012, (petitioners) filed only their counter-affidavits. They admitted going to the place of incident for the purpose of checking if the cockfight was with a permit. (Petitioners) denied the unlawful acts imputed against them by (respondent).

Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over the defense of denial.

(Petitioners') defense which constitutes mainly of denial is not supported by any evidence. As such, it remained self-serving and does not deserve merit.

A thorough perusal of the records, however, shows that only the allegations of serious physical injuries and (petitioners') act of firing their rifles in the air were duly proven by (respondent). Such fact finds support in (respondent's) medical certificate and the sworn statement of witness Roger Ferrer. Moreover, We do not find ill-motive or bad faith on the part of (respondent) and Ferrer. The claim of robbery is not supported by any evidence and therefore, cannot be taken against (petitioners). Unfortunately, We do not find this as a ground to mitigate (petitioners') liability. Their wanton disregard of the rights of others and their flagrant display of unethical behavior can never be sanctioned. Clearly, (petitioners) failed to measure up to the ethical standards set for public officers.”^[12]

Unflustered, petitioners filed the instant Petition asserting that the assailed Order should be reversed and set aside— one, their right to due process was violated; and, two, they have newly discovered evidence.^[13] They averred that the entire proceedings before the OMB-MOLEO was done in violation of their constitutional right to due process such that from the very beginning it was null and void. The quasi-judicial body was not able to appreciate the effects and consequences of the Affidavit of Withdrawal executed by respondent.^[14]

Petitioners' thesis carries no weight and conviction. A fortiori, the Petition lacks merit.

Petitioners postulate that the proceedings against them were flawed since the 17 June 2011 Decision was reached without due notice to them. This being so, the Decision was void and could not become final and executory.

The record belies petitioners' postulation.

It is not disputed that after the Decision dated 17 June 2011 was rendered, petitioners moved for a reconsideration thereof. Consequently, the OMB-MOLEO, in its 29 February 2012 Order, directed petitioners to file their Counter-Affidavit and Position Paper. Pursuant to such Order, petitioners filed their Counter-Affidavit. In due course, the OMB-MOLEO issued the impugned Order affirming its earlier Decision.

Given the foregoing facts, We find no denial of due process that would warrant the invalidation of the proceedings.

As heretofore adumbrated, petitioners were afforded a fair and reasonable opportunity to explain their side. If at

all, any alleged procedural defects in the proceedings were cured by the filing of their Motion for Reconsideration. This finds underpinning in the doctrinal precedent enunciated in *Vivo v. PAGCOR*[15] to the effect that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was given the opportunity to be heard.[16] On this score, the High Court edifyingly pronounced—

“The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.”[17]

Anent the second issue on respondent's Affidavit of Withdrawal, suffice it to say that a scrutiny thereof reveals that it was never subscribed and sworn to before a person authorized to administer oaths. Thus, dubiety exists as to its genuineness and due execution. Rivetingly, this document was executed only on 10 January 2013, i.e., 19 months after the rendition of the 17 June 2011 Decision and almost nine months after the issuance of the assailed Order. This hard fact reinforces the incertitude of the contentious Affidavit. Settled is the rule that affidavits of recantation are unreliable and deserve scant consideration. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt. In *Busuego v. Office of the Ombudsman*,[18] the Supreme Court sagely explicated—

“Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement . . . not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e., that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. xxx

Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. Unless there be special circumstances which, coupled with the retraction of the witness, really raise doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, or its elimination would lead the trial judge to a different conclusion, an acquittal of the accused based on such a retraction would not be justified.”

There is no gainsaying that the Affidavit of respondent's corroborating witness was never withdrawn. This only demonstrates that the complained acts truly occurred.

With this discourse, We find no cogent reason to reverse and set aside the questioned Order which affirmed the

Decision dated 17 June 2011 finding petitioners guilty of Simple Misconduct. It bears emphasis that findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[19]

WHEREFORE, the Petition for Review is hereby DENIED.

SO ORDERED.

Ybañez and Manahan, JJ., concur.

[1] The Office of the Ombudsman is dropped as party-respondent pursuant to Section 6, Rule 43 of the Rules of Court.

[2] Rollo, pp. 128-131.

[3] Rollo, p. 130.

[4] Id., pp. 4-7.

[5] See Memorandum, Id., p. 196.

[6] Id., pp. 78-80.

[7] See Medical Certificate, Rollo, p. 81.

[8] Id., pp. 83-84.

[9] Id., pp. 92-95.

[10] Id., p. 10.

[11] Id., pp. 10-11.

[12] Rollo, pp. 10-11.

[13] Id., p. 5.

[14] See Memorandum, Id., p.197.

[15] 709 SCRA 276 (12 November 2013).

[16] See Id., p. 285.

[17] Id., pp. 285-286, citing *Casimiro v. Tandog*, 459 SCRA 624, 631 (8 June 2005).

[18] 707 SCRA 298, 326 (9 October 2013), citing *Firaza v. People*, 518 SCRA 681, 692 (22 March 2007).

[19] See *Miro v. Vda. de Erederos*, GR No. 172532 and 172544-45 (20 November 2013).

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